



POLICE DEPARTMENT

February 7, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Tommy Ngu
Tax Registry No. 930831
5 Precinct
Disciplinary Case No. 85034/09

The above-named member of the Department appeared before the Court on September 27, 2010, charged with the following:

1. Said Police Officer Tommy Ngu, assigned to the 5th Precinct, while off-duty, on or about January 12, 2009, in Kings County, did intentionally place or attempt to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument, to wit: said Police Officer pointed a knife at and stated, "I will kill you!" to his spouse, Kawei Tsang-Ngu. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 - PROHIBITED CONDUCT
NYS PENAL LAW SECTION 120.14 (1) - MENACING IN THE SECOND DEGREE

2. Said Police Officer Tommy Ngu, assigned to the 5th Precinct, while off-duty, on or about January 12, 2009, in Kings County, did prevent Kawei Tsang-Ngu from leaving their residence by throwing her towards a wall, knocking her head against it and throwing her to the floor. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 - PROHIBITED CONDUCT
NYS PENAL LAW SECTION 135.05 - UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE

3. Said Police Officer Tommy Ngu, assigned to the 5th Precinct, on or about January 12, 2009, in Kings County, with intent to cause physical injury to Kawei Tsang-Ngu, did cause such injury to such person by pulling her arm behind her back, which resulted in her receiving a bruise to her arm and stated, "I'm going to end it all today." *(As amended)*

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P G 203-10, Page 1, Paragraph 5 - PROHIBITED CONDUCT
NYS PENAL LAW SECTION 120.00(1) - ASSAULT IN THE THIRD DEGREE

4 Said Police Officer Tommy Ngu, as assigned in Specification # 1, on the date, time, and location indicated in Specification No. 1, while off-duty, in Kings County did possess any firearm, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, can sword, billy, blackjack, bludgeon, metal knuckles, chukka stick, sand bag, sandclub, wrist-brace type slingshot or slunshot, shuriken or "Kung Fu" star

P G 203-10, Page 1, Paragraph 5 - PROHIBITED CONDUCT
NYS PENAL LAW SECTION 265.01(1) - CRIMINAL POSSESSION OF A
WEAPON IN THE FOURTH
DEGREE

5 Said Police Officer Tommy Ngu, as assigned in Specification # 1, on the date and at the location indicated in Specification No. 1, while off-duty, having been involved in a police incident, did thereafter fail and neglect to report said incident to his Commanding Officer, as required (*As amended*)

P G 212-32, Page 1, Paragraphs 1 and 2 - FAILURE TO REPORT A POLICE
INCIDENT

6 Said Police Officer Tommy Ngu, as assigned in Specification # 1, on the date and at the location indicated in Specification # 1, did fail and neglect to properly safeguard his off-duty firearm, to wit, a Glock 9MM, serial number FGG931 (*As amended*)

P G 204-08, Page 2, Paragraph 7 - FIREARMS - GENERAL REGULATION -
GENERAL REGULATIONS

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and the Respondent was represented by Aaron Mysliwiec, Esq.

The Department moved to dismiss Specification No. 4. The Respondent, through his counsel, entered a plea of Not Guilty to the remaining charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty of Specification Nos 1, 2 and 3 and Guilty of Specification Nos 5 and 6. It is recommended that Specification No 4 be dismissed.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Christopher Connolly and Sergeant Daniel Pavelchak as witnesses and provided two interviews of the complainant, Kawai Tsang-Ngu.

Sergeant Christopher Connolly

Connolly, a 14-year member of the Department, is currently assigned to the Brooklyn South Investigations Unit. On January 12, 2009, he reported to the 61 Precinct stationhouse in response to a domestic incident involving the Respondent and his wife, Kawai Tsang-Ngu. At approximately 10:00 p.m. that day, he interviewed Tsang-Ngu in the commanding officer's office. He described Tsang-Ngu as approximately 5'5" tall and with a slight build. In the interview, Tsang-Ngu told Connolly that a physical altercation with the Respondent had occurred at approximately 2:00 p.m. She also told Connolly that after the incident, she called 311 and asked how to report a domestic incident. She explained to Connolly that she did not want to get the Respondent in trouble, she just wanted information. Connolly saw a small bruise on Tsang-Ngu's left triceps. Although Tsang-Ngu also complained of pain to her neck and back, she refused

medical attention Connolly did not recall Tsang-Ngu telling him about the Respondent attempting to put his hands around her neck and strangle her

Connolly testified on cross-examination that Tsang-Ngu told him that the Respondent slammed her into a wall, threw her to the ground, and dragged her from one room to another Tsang-Ngu weighed approximately 105 pounds The bruise on her triceps and a damaged fingernail were the only injuries that Connolly observed [Respondent's Exhibit (RX) A consists of two photographs of Tsang-Ngu, taken by Connolly on the day of the incident They show Tsang-Ngu's upper arm and thumb nail]

Connolly testified on redirect examination that Tsang-Ngu told him she was wearing her coat during the altercation.

Connolly testified on recross-examination that at no point during the interview did Tsang-Ngu admit to hitting the Respondent. Tsang-Ngu stated in the interview that she had not examined herself and did not think she was injured

[RX C is a copy of the Domestic Incident Report, taken on the day of the altercation The report indicates that Tsang-Ngu alleged forcible restraint, pushing, threat by a sharp instrument, and strangulation/choking In the supporting deposition section, Tsang-Ngu wrote that when she got home from work, the Respondent started screaming at her for not being responsible for the children She asked him to stop screaming and proceeded to walk to the front door with her purse and coat The Respondent shoved her backward and took her purse He then picked her up by the coat collar, threw her to the floor, and dragged her by the coat to the kitchen The Respondent took out a knife, pointed it in Tsang-Ngu's direction, and said he would kill her He then threw her toward the wall, with her head knocking against the wall When Tsang-Ngu asked the

Respondent to let her go, he threw her on the floor, pulled her arm backward, and said that he was "going to end it all today " In the middle of the altercation, the Respondent took his gun from the top of a cabinet and took it out of its holster Tsang-Ngu told him that she would not hold the gun, so the Respondent put it back in the holster The Respondent asked her to apologize for hitting his face in self-defense When Tsang-Ngu apologized, the Respondent started to calm down After he left the house, Tsang-Ngu called 311 for domestic violence counseling]

Connolly's Interview With Tsang-Ngu¹

Department's Exhibits (DX) 1 and 1A are the compact disc recording and transcript of Connolly's interview with Tsang-Ngu, dated January 12, 2009 Tsang-Ngu stated in the interview that the Respondent screamed at her on the telephone earlier in the day When she arrived at home at approximately 2 00 p m , the Respondent screamed at her again She decided to leave the house, so she put on her coat As she started to walk out of the house, the Respondent shoved her at the front door, grabbed her purse, and threw it on the floor He would not let her out of the house, and she told him he could not hold her hostage He then grabbed her coat collar and dragged her by the coat from the living room to the kitchen He then lifted her up, held her at arm's length, and pointed a knife in her direction He then pushed her toward the wall, causing her to knock her head against the wall He then pushed her face down onto the floor, pulled her arm back, and stated, "I'm going to end it all today " At one point, the Respondent retrieved a firearm from the top of a cabinet, took the gun out of its holster, and aimed it at the floor in front

¹ The Assistant Department Advocate informed the Court that Tsang-Ngu was subpoenaed to appear at trial In a telephone conversation the week of trial, however, Tsang-Ngu told the Assistant Department Advocate that she was unwilling to testify

of her, as if he were handing it to her. After Tsang-Ngu told the Respondent that she was not going to touch the gun, he put it away. The Respondent told Tsang-Ngu that he would stop if she said she was sorry. Tsang-Ngu apologized because she wanted the altercation to be over.

After the altercation, the Respondent told Tsang-Ngu to come to bed so that they could lay down together before he left for work. They were in bed together until he went to work at approximately 6 30 p.m. Before he left the house, he stated, "You're not taking my children away. Why do I have a feeling that you're gonna do that?" He walked out but then returned and repeated this statement. When the Respondent left for good, Tsang-Ngu called 311. The 311 operator asked if she needed 911, but she said no because she did not want to get the Respondent in trouble. She was informed that she needed a police report in order to get an order of protection. This is the reason she went to the stationhouse. She did not want to press charges against the Respondent, get him in trouble, or ruin his life.

As a result of the altercation, Tsang-Ngu suffered a broken fingernail and her arms were numb. Although she felt soreness, she did not check herself for bruises and did not think she was injured anywhere else. Tsang-Ngu told Connolly that while the Respondent is impulsive and hostile, he maintains a courteous personality outside of the house. She fears for her safety.

Tsang-Ngu told Connolly that the Respondent keeps his gun on top of a tall cabinet so that the children are unable to reach it. The gun is not locked away, and she has never checked to see if it is loaded. Twice before, the Respondent handed her a gun and asked her to kill herself. She also told Connolly that they had had prior physical

altercations. Once, in 2003, when she asked for a divorce, the Respondent pushed her and pinned her to a wall while she had a baby in her arms. He also slapped her and held a knife to her neck. She did not report this incident because she did not want him to get in trouble.

Another time, a year and a half ago, while Tsang-Ngu was staying at her parents' house, the Respondent came to the house and was screaming. One of the Respondent's co-workers (another off-duty police officer) was waiting outside in the car, and Tsang-Ngu ran outside and asked for help. This co-worker went into the house to take the Respondent away.

Sergeant Daniel Pavelchak

Pavelchak, an eight-year member of the Department, is currently assigned to the Manhattan South Investigations Unit. On January 14, 2009, he was assigned to investigate the Respondent's case. As part of his investigation, he reviewed Connolly's interview of Tsang-Ngu. Pavelchak also conducted three follow-up telephone interviews of Tsang-Ngu. According to Pavelchak, Tsang-Ngu's statements in all of her interviews were consistent with one another. Tsang-Ngu told Pavelchak that she called 911 after the incident because she wanted information on obtaining an order of protection without pressing charges. Tsang-Ngu was informed that she would need police paperwork from the local precinct. This was why Tsang-Ngu went to the 61 Precinct stationhouse. Within two weeks of the incident, Tsang-Ngu moved out of the house.

As part of his investigation, Pavelchak also interviewed the Respondent. The Respondent conceded to Pavelchak that he was, in fact, involved in a physical domestic

altercation but did not make any notifications about it. In addition, the Respondent told Pavelchak that during the altercation, his firearm was stored in a drawer next to his bed. The drawer did not have a locking mechanism engaged. The Respondent had a total of seven firearms in the house. There were no locking mechanisms or devices, but a rifle in the basement was stored inside a box.

On cross-examination, Pavelchak testified that the Respondent was found to be fit for duty on the day of the incident. The Respondent has been compliant with the Department's order that he attend counseling. Pavelchak was unaware of any prior Domestic Incident Reports. At no point during the investigation did Tsang-Ngu say anything about being choked. Tsang-Ngu never told Pavelchak anything about hitting the Respondent.

Tsang-Ngu told Pavelchak that there had been a previous domestic dispute that was witnessed by various members of the service, including somebody named Garcia. Pavelchak subsequently interviewed a Police Officer Alex Garcia, a close acquaintance of the Respondent who had spent time at the Respondent's residence, and a Police Officer Vincent Chung, who had taken part in numerous social events at the Respondent's house. Garcia told Pavelchak that he had never observed any kind of dispute between the Respondent and Tsang-Ngu. Similarly, Chung told Pavelchak that he did not recall witnessing any disputes.

Pavelchak testified that none of the Respondent's firearms were locked in a safe. Pavelchak did not personally examine the firearms or know where the ammunition was located. The investigators who examined the guns, however, gave no indication that the guns were loaded. A rifle that was recovered had the bolt removed. The Respondent

stated in an interview that removing bolts to certain rifles was his normal safeguarding procedure

Although Pavelchak interviewed Tsang-Ngu three times, at no point while they spoke was Tsang-Ngu under oath. At no point did Tsang-Ngu tell him that she consulted with a divorce lawyer before the incident, that she withdrew \$75,000 from a joint bank account soon after the incident, or that the Respondent had admitted to having an affair and requested a divorce.

On redirect examination, Pavelchak testified that neither Garcia nor Chung mentioned that the Respondent or Tsang-Ngu was planning to divorce.

Pavelchak's Interview With Tsang-Ngu

DX 2 and 2A are the compact disc recording and transcript of one of Pavelchak's telephone interviews with Tsang-Ngu. Tsang-Ngu stated in the interview that she moved out of the house the day after the incident and had an active order of protection against the Respondent. Pavelchak proceeded to review for Tsang-Ngu an account of the incident that she had provided in a previous interview. Tsang-Ngu indicated to Pavelchak that this account was accurate.

The Respondent's Case

The Respondent testified in his own behalf and provided a transcript of Tsang-Ngu's criminal court testimony.

The Respondent

The Respondent, an eight-year member of the Department, is currently assigned to the 5 Precinct. Prior to becoming a member of the service, he spent six years serving in the Marine Corps. While in the military, he received two medals: one for national defense during the Gulf War and another for good conduct.

The Respondent has never discharged his firearm while on duty, nor has he been accused of using excessive force. He met Tsang-Ngu in 1993, and they married in 2001. Tsang-Ngu worked at Macy's, where she was promoted numerous times. The Respondent never prevented Tsang-Ngu from socializing with friends and colleagues. Tsang-Ngu managed the household finances. The Respondent and Tsang-Ngu shared a joint bank account. In addition, Tsang-Ngu had a personal account.

The Respondent has two children: a seven-year-old daughter and a four-year-old son. Because he and Tsang-Ngu have different styles of raising children, there was tension in the marriage. He is involved in his children's lives, and he took two weeks off from work when each child was born. Tsang-Ngu's mother, who lived next door, assisted with childcare. There was also tension in the marriage over scheduling. In 2007, he offered to quit his job because their schedules were too demanding. After their second child was born, their romantic connection ended. While the Respondent still loved Tsang-Ngu as a friend, he was no longer in love with her. In 2006, the Respondent had an affair. When Tsang-Ngu confronted him about it, the Respondent confessed and told her that he wanted a divorce. They later agreed that they would stay together for the sake of the children.

The Respondent testified that on January 12, 2009, he was doing chores at home. At one point he called Tsang-Ngu and asked her when she was coming home. He explained that Tsang-Ngu had been doing overnight inventories at Macy's, and the children had not seen her in nearly a week. When Tsang-Ngu came home that day, she had a tray of Chinese food with her. She took off her jacket, sat down, and started to eat the food in front of the television. The Respondent told her that the children missed her, and Tsang-Ngu replied that she did not want to see them just then. They started to yell at each other. At one point, Tsang-Ngu stood up, started to scream in the Respondent's face, grabbed his shirt, yanked him back, and punched him in the head. Tsang-Ngu threw approximately five punches, but the Respondent was able to dodge most of them. Tsang-Ngu had never hit him before, and the Respondent felt shocked. He grabbed Tsang-Ngu and shoved her into the couch. There was no further physical contact. The Respondent told Tsang-Ngu, "Don't you fucking do that again." He also told her that he wanted a divorce and that he would fight her for custody of the children. He then got ready for work and went to his command. He testified that at no point that day did he hit Tsang-Ngu, trap her in the house, or threaten her with a weapon.

During the incident, his off-duty firearm was in his bedside table. The clip was not in the gun but on the top ledge of a seven-foot tall cabinet located on the downstairs floor of the house. The Respondent kept the clip there so that the children would be unable to connect the clip with the gun. Neither the gun nor the clip was on his person during the altercation. There were six other firearms in the house. According to the Respondent, all of these firearms were stored in their cases without their magazines, and they were placed high up on a shelf with their slides locked to the rear. He explained that

having the slides locked to the rear would have made it difficult for the children to insert magazines. Ammunition for these guns was stored downstairs in a locked metal military crate.

The Respondent did not report the incident to the Department. He explained that he did not think anybody would believe him, he did not want his wife arrested, and the situation was embarrassing. The Respondent was arrested that night. Upon his release the next day, he learned that Tsang-Ngu changed his email passwords and removed \$75,000 from their joint bank account.

On cross-examination, the Respondent described Tsang-Ngu as "the aggressor" in the altercation. Although they had had previous verbal arguments, this was the first time that Tsang-Ngu became physical. Tsang-Ngu hit the Respondent four to five times in the face with a closed fist. The Respondent responded by grabbing her by the arm, pushing her back, and throwing her to the couch. At no point did she fall on the floor. The Respondent neither sustained any injury in the altercation nor sought medical treatment.

The Respondent testified that every couple of months he and Tsang-Ngu discussed getting a divorce. They are currently divorced, and Tsang-Ngu has custody of the children. The Respondent has visitation rights and tries to see the children weekly.

The drawer where the Respondent kept his off-duty firearm was not locked. Tsang-Ngu knew that the ammunition for that gun was kept on top of a cabinet in the living room. While the Respondent's children would have been unable to reach the ammunition, Tsang-Ngu would have been able to access it.

The Respondent conceded that he was the one who initiated the verbal argument with Tsang-Ngu that day. He was upset that she was not seeing her children. He stated that he never hit Tsang-Ngu or threw her to the ground.

On redirect examination, the Respondent reiterated that Tsang-Ngu took off her jacket when she entered the house. At no point during the altercation was Tsang-Ngu wearing her jacket (a trench coat). At the time, the Respondent weighed a little over 180 pounds, and Tsang-Ngu weighed approximately 105 pounds. It did not hurt the Respondent when Tsang-Ngu struck him.

Tsang-Ngu's Criminal Court Testimony

RX B is the transcript of Tsang-Ngu's criminal court testimony, dated November 16, 2009. She testified that once, when she was seven months pregnant, the Respondent threw a knife in her direction. It did not hit her. He then threw her across the room, and she landed on the floor. When the baby was a month old, she asked the Respondent for a divorce. The Respondent responded by pinning her against the wall and pointing a military knife at her neck. At the time, she was holding the baby. The Respondent then slapped her really hard on the face. She lost consciousness and the baby fell on her lap. During a November 2008 argument, the Respondent gave her his gun and told her to kill herself. She gave him the gun back and walked out of the room. She did not report this incident to the police because she was scared of retaliation by the Respondent. She was afraid that he was going to kill her. She stayed in the relationship because she did not think it was possible to leave. Whenever she talked about getting a divorce, the Respondent would threaten to ruin her life and take the children away.

At 1 45 p m on January 12, 2009, the Respondent called Tsang-Ngu on the telephone to scream at her. Approximately 15 minutes later, Tsang-Ngu arrived at home after an 18-hour shift at work. At that point, the Respondent started screaming at her for being irresponsible to the family. She explained that the Respondent was upset because he did not want her working anymore. She told the Respondent that she did not want to argue, and she walked into the living room. A very angry Respondent would not stop screaming, so Tsang-Ngu put on her shoes and coat and picked up her purse. She explained that she wanted to leave the house and extricate herself from the situation. The Respondent stood in front of the door, blocking her from leaving, and pushed her by the shoulders back into the room. He then lifted her off of the floor by her coat collar and pushed her to the floor with her back landing on the floor. He then grabbed her again by the collar and shove her onto the sofa, where he got on top of her and restrained her.

The Respondent then dragged Tsang-Ngu 20 to 25 feet by the coat from the living room to the kitchen, where he pointed a knife at her and told her, "I'm going to kill you." The knife was 12 to 14 inches long. He then pushed her to the wall, grabbed her by the hair, and knocked the back of her head against the wall a couple of times. When Tsang-Ngu was yelling for help, the Respondent placed one hand on her neck, and he used the other hand to cover her head and mouth. Tsang-Ngu felt like she "was losing air." He then threw her facedown to the kitchen floor. He wrapped her arms behind her back and tried to take off her belt. He then went to a cabinet in the next room and grabbed his firearm. He took the gun out of its holster and positioned it in front of her face. After she told him that she was not going to take the gun, he told her to apologize. Tsang-Ngu apologized to make the fight end.

The Respondent told Tsang-Ngu to lay with him in the bedroom before he left for work. Tsang-Ngu complied because she did not want to frustrate him anymore. While in the bedroom, the Respondent asked, "Why do I think that you are going to take the kids away? Are you still going to be here when I get back from work?" When the Respondent left the house, he returned a few minutes later to confirm that she was not going to take the children away. After the Respondent left a second time, she went to her local precinct to report the incident. Tsang-Ngu is 5'1" tall and weighs 105 pounds. The Respondent, who is 5'8" tall, weighed 180 pounds at the time of the incident.

On cross-examination, Tsang-Ngu testified that she found out in 2006 that the Respondent was having an affair. When she confronted him, the Respondent told her to decide if she wanted a divorce. Although she ultimately decided that they should stay together for the children, she consulted a divorce attorney in 2007. The attorney taught her about factors that are considered in a divorce and how finances are divided. Tsang-Ngu testified that at the time of the January 12, 2009 incident, she had already worked nearly 80 hours that week. She was tired that day and did not want to have a conversation about the children or the marriage. She just wanted to eat and go to bed. There was \$80,000 in the joint account she shared with the Respondent. She removed \$75,000 from the account the following day.

She testified that she wanted to leave the house on January 12, but the Respondent trapped her in the house between the hours of 2:00 and 3:00 p.m. The Respondent threatened her that day with both the knife and the gun. When he threw her onto the floor, her back landed on a hardwood floor. He slammed her head against the wall four or five times and then threw her down on the floor again. She reiterated that, at one

point, the Respondent choked her by covering her mouth, causing her to have trouble breathing. In the written statement she gave to the police that day, however, she did not mention anything about being choked.

Tsang-Ngu included in her written statement that she hit the Respondent in self-defense. She did not include this detail originally but went back afterwards and inserted it. She explained that she was hitting the Respondent away while he restrained her on the couch. She did not mention hitting the Respondent in her stationhouse interview.

On redirect examination, Tsang-Ngu testified that she contacted the divorce attorney in 2007 because the Respondent had thrown her out of the house. He took her house keys, and she stayed at her mother's house for three months. She declined medical attention when the police asked because she wanted to get home to check on her children.²

FINDINGS AND ANALYSIS

Under Specification No. 4, the Respondent is charged with possessing "any firearm, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, metal knuckles, chukka stick, sand bag, sand club, wrist brace type slingshot or slingshot, shiriken or "Kung Fu" star

The Department moved to dismiss this specification because it pertained to an electronic air gun which the Assistant Department Advocate informed the Court that the Respondent, because of his police officer status, is exempt from the charge of Criminal Possession of a Weapon in the fourth degree for this type of gun.

² The Respondent's attorney informed the Court that after a Kings County criminal trial, before the Integrated Domestic Violence Part, the Respondent was found Not Guilty of Unlawful Imprisonment, Assault, and Criminal Possession of a Weapon.

Based on the foregoing, it is recommended that Specification No 4 be dismissed

Under Specification No 1, the Respondent is charged with attempting to place his spouse, Kawei Tsang-Ngu, in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon or dangerous instrument where he pointed a knife at her and stated "I will kill you " He is charged in Specification No 2, with preventing Tsang-Ngu from leaving their residence by throwing her towards a wall, knocking her head against it and throwing her to the floor In Specification No 3, he is charged with intentionally causing Tsang-Ngu to suffer physical injury by pulling her arm behind her back, which resulted in her receiving a bruise to her arm and he stated, "I'm going to end it all today "

At the outset, it is disturbing to this Court that Tsang-Ngu, told the Assistant Department Advocate that she would not appear to testify at this trial She brought these serious allegations against him and yet she refused to come forward to support her claims of what occurred Tsang-Ngu and the Respondent have subsequently obtained a divorce but that fact does not excuse her from appearing at this trial

During Tsang-Ngu's interview with Sergeant Connolly on the day of the incident, she told him that a physical altercation with the Respondent had occurred at approximately 2 00 p m He stated that she called 311, a number to access all non-emergency information and services of New York City,³ to ask how to report a domestic incident She explained to Connolly that she called this number because she did not want to get the Respondent in trouble—she just wanted to get information

³ The information regarding 311 was taken from the Official Directory of the City of New York also known as the "Green Book."

During this interview, she stated that the Respondent called her to scream at her and when she came home at approximately 2 00 p m , he screamed at her again She stated that, at one point, when she put her coat on to leave the house, the Respondent shoved her at the front door, grabbed her purse and threw it on the floor She stated that he would not allow her to leave and grabbed her by her coat collar and dragged her from the living room to the kitchen He then lifted her up and pointed a knife at her and pushed her head against a wall and pushed her face down on the floor He pulled her arm back and told her "I'm going to end it all today "

According to Tsang-Ngu, the Respondent took his gun out and, while pointing it to the floor, appeared to be handing it to her When she refused to take it, he put it away He then told her he would stop if she would apologize and she did to end the situation The Respondent then left the house but not before telling her that he felt she was going to take their children from him Tsang-Ngu then called 311 for guidance and was told that she needed to go to the stationhouse for an order of protection, which she did Her stated hesitation about going to the police was because she did not want to get the Respondent in trouble She also stated that she did not physically examine herself because she did not think she was injured

Connolly testified that he saw a small bruise on her left triceps and damage to her finger nail She told Connolly that she had pain in her neck and back but refused medical attention He took photographs of her broken fingernail and her left arm (RX A), but the photos are not clear enough to show any injuries He further testified that at no point during the interview did she tell him that she hit the Respondent

On January 14, 2009, Pavelchak was assigned to investigate this case. He reviewed Connolly's interview of Tsang-Ngu and conducted three follow-up telephone interviews with her and found that all the statements she made to him were consistent with one another. At one point, he reviewed for her an account she gave during her previous interview and she indicated that this account was accurate.

During one of his interviews she told him that she moved out of the house the day after the incident and had an active order of protection against the Respondent. At no point during his interviews, however, did she say anything about being choked nor did she tell him that she had consulted with a divorce lawyer before the incident or that she withdrew \$75,000 from their joint bank account soon after the incident. She also did not tell Pavelchak that the Respondent admitted to her that he had an affair and wanted a divorce.

During the Respondent's criminal trial⁴, Tsang-Ngu testified to many of the facts that she gave in her interviews with Connolly and Pavelchak. During that testimony, she explained the Respondent's anger was due to him not wanting her to continue working. Because he would not stop screaming at her, she decided to leave the house and it was then that he blocked her exit and proceeded to push her around their home and then to the floor. She testified at that trial that he pointed a 12 to 14 inch knife at her telling her that he was going to kill her. She further explained about him wanting her to take his gun and her refusing. She also told of how she went to the precinct once he left the house.

She also testified that she found out in 2006 that the Respondent was having an affair and that she consulted a divorce lawyer in 2007. As previously mentioned, she did not tell Department investigators of these events. She also testified that the Respondent

⁴ The Respondent was found Not Guilty at his criminal trial.

choked her by covering her mouth causing her to have trouble breathing. She also did not mention this important fact in her written statement to police soon after the event

She claimed during her criminal trial testimony that she did not report prior incidents because she was afraid he was going to kill her and she stayed in the relationship because she did not think it was possible to leave. Yet, with all her claimed fear of the Respondent, she still went to the bank and withdrew \$75,000 of the \$80,000 dollars they had in their joint account—presumably the lion-share of their savings

While this Court is fully aware that hearsay testimony is acceptable in this forum it also mindful that, for that testimony to be given any credible weight, there must be some sort of corroborating evidence in support of the hearsay. For example, an eyewitness account of what occurred or medical records showing injuries consistent with the purported physical assault, or even admissions from the Respondent. Here, there was no corroboration in support of the hearsay statements. In fact, the only evidence of the event was multiple statements made by Tsang-Ngu. In essence, multiple hearsay statements made by Tsang-Ngu, no matter how consistent they may be, is not corroborating evidence of the facts in this case. They are just a repeat of the same accusations at different times and under different circumstances. Her statements are not supported by any other credible evidence presented to this Court.

The Respondent testified in this case and he told this Court that there was tension in their marriage that stemmed from their different styles of raising their two children and work schedules. At one point, after their second child was born, the romance in their marriage ended. He had an affair and told her he wanted a divorce. They later agreed to stay together for the children.

On the day of the incident he stated that Tsang-Ngu came home after being at work all night doing inventories and she sat down eating her take-out food in front of the television. The Respondent told her that the children missed her and she told him that she did not want to see them at that point. They started to argue and, according to the Respondent, she screamed in his face, grabbed his shirt, yanked him back and punched him in the head. She then threw approximately five punches which he was able to avoid by moving out of the way. She had never hit him before and he grabbed her arm and pushed her to the couch to avoid being struck again. At no point did she fall to the floor. While he admitted that he told her, "Don't you fucking do that again," he stated that at no point did he hit her, threaten her with a weapon or trap her in the house. He did not have a gun on him and he stored his firearms on a top shelf with the slides locked in the rear position and the magazines locked in a metal military crate in another part of the house.

The Respondent was arrested and, upon his release, he learned that Tsang-Ngu had changed his e-mail passwords and removed 75,000 from their joint bank account. After discussing divorce on many occasions, they currently are divorced with Tsang-Ngu having custody of the children. The Respondent has rights to see them on a weekly basis.

This Court does not find, from the Respondent's testimony, any admissions to the incident that Tsang-Ngu described. He actually denied Tsang-Ngu's version of what occurred and even painted her as the aggressor in the incident pointing out that she was the one who was striking him.

This Court finds that Tsang-Ngu's hearsay alone is not enough to support the allegations against the Respondent. There were some inconsistencies in her hearsay statements and based on her meeting with a divorcee lawyer and removing \$75,000 from

their joint account leaves this Court with considerable doubt of the veracity of her version of what occurred. Without her appearance in court or the admission of more credible evidence to support her allegations, it could easily be construed that she was looking for the upper hand in the divorce that subsequently took place.

Based on the foregoing, the Respondent is found Not Guilty of Specification Nos 1, 2 and 3.

The Respondent is charged in Specification No. 5, that after having been involved in a police incident, he did thereafter fail and neglect to report said incident to his Commanding Officer, as required.

The Respondent admitted that he did not report the incident to the Department because he did not think anybody would believe him, he did not want his wife arrested and he felt embarrassed by the situation.

Based on the foregoing the Respondent is found Guilty of Specification No. 5.

Under Specification No. 6, the Respondent is charged with failing to properly safeguard his off-duty Glock 9MM firearm.

The Respondent testified that he kept his firearms in their cases without their magazines and placed them on a high shelf in his home. He explained that the slides were locked to the rear, which would have made it more difficult for his children to insert the magazines. What the Respondent fails to realize is that while his children would have found it difficult to load his firearms, someone else may not find it so difficult. The Department expects its members to safeguard their firearms and placing them on a high

shelf with the slides locked in the rear position is not sufficient enough to ensure that someone might not discover the weapons and put them to deadly use

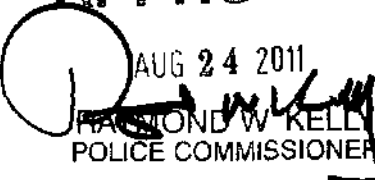
Accordingly, the Respondent is found Guilty of Specification No 6

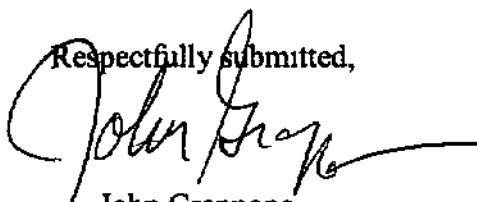
PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined See Matter of Pell v Board of Education, 34 N Y 2d 222, 240 (1974) The Respondent was appointed to the Department on July 1, 2002 Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum

The Respondent has been found Guilty of failing to report the incident he had with his wife and further failing to safeguard his firearm It is important for this Court to note that failing to safeguard firearms is a serious matter in that the weapon can find its way into someone's hands with fatal consequences

Based on the foregoing, it is recommended that the Respondent forfeit, as a penalty, the 30 days he previously served on suspension without pay

APPROVED
AUG 24 2011

RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

John Grappone
Assistant Deputy Commissioner-Trials

POLICE DEPARTMENT
CITY OF NEW YORK

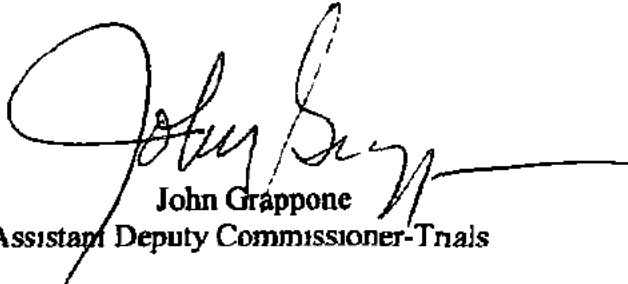
From Assistant Deputy Commissioner – Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER TOMMY NGU
TAX REGISTRY NO 930831
DISCIPLINARY CASE NO 85034/09

On the last three performance evaluations contained in his personnel file, the Respondent received ratings of 4.0 "Highly Competent," 4.5 "Highly Competent," and 4.0 "Highly Competent."

The Respondent has been awarded three Excellent Police Duty medals.

The Respondent has no prior disciplinary record.

For your consideration


John Grappone
Assistant Deputy Commissioner-Trials